



March 25, 2005

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## ENGROSSED HOUSE BILL No. 1453

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DIGEST OF HB 1453 (Updated March 23, 2005 7:28 pm - DI 106)

**Citations Affected:** IC 23-7; IC 23-17; IC 30-4.

**Synopsis:** Professional fundraisers and solicitors. Defines "bona fide employee" for purposes of regulating professional fundraisers. Requires a professional solicitor to provide certain information to charitable organizations. Allows the attorney general to seek remedies against nonprofit corporations and benevolent trusts for certain violations. Provides that venue in a proceeding by the attorney general against a trust lies in Marion County, unless venue in Marion County would constitute a hardship.

**Effective:** July 1, 2005.

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**Richardson, Pierce, Dickinson, Torr**  
(SENATE SPONSOR — CLARK)

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January 18, 2005, read first time and referred to Committee on Employment and Labor.  
February 14, 2005, reported — Do Pass.  
February 17, 2005, read second time, ordered engrossed.  
February 18, 2005, engrossed.  
February 21, 2005, read third time, passed. Yeas 96, nays 0.

SENATE ACTION

February 24, 2005, read first time and referred to Committee on Judiciary.  
March 24, 2005, amended, reported favorably — Do Pass.

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EH 1453—LS 7625/DI 103+



March 25, 2005

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

## ENGROSSED HOUSE BILL No. 1453

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A BILL FOR AN ACT to amend the Indiana Code concerning  
business and other associations.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 23-7-8-1 IS AMENDED TO READ AS FOLLOWS  
2 [EFFECTIVE JULY 1, 2005]: Sec. 1. As used in this chapter:

3 **"Bona fide employee" means a person who is a regular,**  
4 **nontemporary employee of a charitable organization under the**  
5 **direct and exclusive control of the organization. The term does not**  
6 **include a person that:**

7 **(1) solicits contributions for a charitable organization under**  
8 **the direction, supervision, instruction, or employ of a**  
9 **professional solicitor;**

10 **(2) is engaged or employed as a professional solicitor by any**  
11 **other person; or**

12 **(3) solicits contributions for more than one (1) charitable**  
13 **organization.**

14 "Charitable organization" means any organization described in  
15 Section 501 of the federal Internal Revenue Code.

16 "Contribution" means a promise or pledge of money, a payment, or  
17 any other rendition of property or service. It does not include the

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EH 1453—LS 7625/DI 103+

1 payment of membership dues, fines or assessments, or payments for  
 2 property sold or services rendered by the charitable organization, if not  
 3 sold or rendered in connection with a solicitation, and does not include  
 4 a charitable organization that resells used clothing or household items.

5 "Division" means the consumer protection division, office of the  
 6 attorney general.

7 "Person" includes any individual, organization, trust foundation,  
 8 association, partnership, limited liability company, or corporation.

9 "Professional fundraiser consultant" means any person who is hired  
 10 for a fee to plan, manage, advise, or act as a consultant in connection  
 11 with soliciting contributions for, or on behalf of, a charitable  
 12 organization, but who does not actually solicit contributions as a part  
 13 of the person's services or employ, procure, or engage a compensated  
 14 person to solicit contributions. The term does not include a charitable  
 15 organization, or a bona fide officer, employee, member, or volunteer of  
 16 a charitable organization, that solicits on its own behalf.

17 "Professional solicitor" means a person who, for a financial  
 18 consideration, solicits contributions for, or on behalf of, a charitable  
 19 organization, either personally or through agents or employees  
 20 specifically employed for that purpose, **including agents or employees**  
 21 **specifically employed by or for a charitable organization who**  
 22 **solicit contributions under the direction, supervision, or instruction**  
 23 **of a professional solicitor.** The term does not include a charitable  
 24 organization, or an officer, ~~an~~ **a bona fide** employee, ~~a member,~~ or a  
 25 volunteer of a charitable organization, that solicits on its own behalf.

26 "Solicit" means:

27 (1) to request, other than as described in subdivision (2), directly  
 28 or indirectly, financial assistance in any form on the  
 29 representation that the financial assistance will be used for a  
 30 charitable purpose; or

31 (2) to sell, offer, or attempt to sell any advertisement, advertising  
 32 space, membership, or tangible item:

33 (A) in connection with which any appeal is made for any  
 34 charitable organization or purpose;

35 (B) where the name of any charitable organization is used or  
 36 referred to in any appeal made for any charitable organization  
 37 as an inducement or reason for making a sale described in this  
 38 subdivision; or

39 (C) when or where in connection with a sale described in this  
 40 subdivision any statement is made that the whole or any part  
 41 of the proceeds from the sale will be used for any charitable  
 42 purpose or benefit any charitable organization.

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1 A solicitation shall be considered to have taken place whether or not  
2 the person making the solicitation receives any contribution.

3 SECTION 2. IC 23-7-8-2 IS AMENDED TO READ AS FOLLOWS  
4 [EFFECTIVE JULY 1, 2005]: Sec. 2. (a) A person may not act as a  
5 professional fundraiser consultant or professional solicitor for a  
6 charitable organization unless the person has first registered with the  
7 division. A person who applies for registration shall disclose the  
8 following information while under oath:

9 (1) The names and addresses of all officers, employees, and  
10 agents who are actively involved in fundraising or related  
11 activities.

12 (2) The names and addresses of all persons who own a ten percent  
13 (10%) or more interest in the registrant.

14 (3) A description of any other business related to fundraising  
15 conducted by the registrant or any person who owns ten percent  
16 (10%) or more interest.

17 (4) The name or names under which it intends to solicit  
18 contributions.

19 (5) Whether the organization has ever had its registration denied,  
20 suspended, revoked, or enjoined by any court or other  
21 governmental authority.

22 (b) A registrant shall notify the division in writing within one  
23 hundred eighty (180) days of any change in the information contained  
24 in the registration. However, if requested by the division, the solicitor  
25 has fifteen (15) days to notify the division of any change in the  
26 information.

27 (c) Before acting as a professional fundraiser consultant for a  
28 particular charitable organization, the consultant must enter into a  
29 written contract with the organization and file this contract with the  
30 division. The contract must identify the services that the professional  
31 fundraiser consultant is to provide, including whether the professional  
32 fundraiser consultant will at any time have custody of contributions.

33 (d) Before a professional solicitor engages in a solicitation, the  
34 professional solicitor must have a contract which is filed with the  
35 division. This contract must specify the percentage of gross  
36 contributions which the charitable organization will receive or the  
37 terms upon which a determination can be made as to the amount of the  
38 gross revenue from the solicitation campaign that the charitable  
39 organization will receive. The amount of gross revenue from the  
40 solicitation campaign that the charitable organization will receive must  
41 be expressed as a fixed percentage of the gross revenue or expressed  
42 as a reasonable estimate of the percentage of the gross revenue. If a

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reasonable estimate is used, the contract must clearly disclose the assumptions or a formula upon which the estimate is based. If a fixed percentage is used, the percentage must exclude any amount that the charitable organization is to pay as expenses of the solicitation campaign, including the cost of the merchandise or services sold. If requested by the charitable organization, the person who solicits must at the conclusion of a charitable appeal provide to the charitable organization ~~the names and addresses of all contributors, the amount of each contribution, and a final accounting of all expenditures. Such information~~ **The final accounting** may not be used in violation of any trade secret laws. The contract must disclose the average percentage of gross contributions collected on behalf of charitable organizations that the charitable organizations received from the professional solicitor for the three (3) years preceding the year in which the contract is formed. **The contract also must specify that, at least every ninety (90) days, the professional solicitor shall provide the charitable organization with access to and use of information concerning contributors, including the name, address, and telephone number of each contributor and the date and amount of each contribution. A professional solicitor may not restrict a charitable organization's use of contributor information.**

(e) Before beginning a solicitation campaign, a professional solicitor must file a solicitation notice with the division. The notice must include the following:

- (1) A copy of the contract described in subsection (d).
- (2) The projected dates when soliciting will begin and end.
- (3) The location and telephone number from where solicitation will be conducted.
- (4) The name and residence address of each person responsible for directing and supervising the conduct of the campaign. However, the division shall not divulge the residence address unless ordered to do so by a court of competent jurisdiction, or in furtherance of the prosecution of a violation under this chapter.
- (5) If the solicitation is one described under section 7(a)(3) of this chapter, the solicitation notice must include a copy of the required written authorization.

(f) Not later than ninety (90) days after a solicitation campaign has ended and not later than ninety (90) days after the anniversary of the commencement of a solicitation campaign lasting more than one (1) year, a professional solicitor shall submit the following information concerning the campaign to the division:

- (1) The total gross amount of money raised by the professional

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solicitor and the charitable organization from donors.

(2) The total amount of money paid to or retained by the professional solicitor.

(3) The total amount of money, not including the amount identified under subdivision (2), paid by the charitable organization as expenses as part of the solicitation campaign.

(4) The total amount of money paid to or retained by the charitable organization after the amounts identified under subdivisions (2) and (3) are deducted.

The division may deny or revoke the registration of a professional solicitor who fails to comply with this subsection.

(g) The charitable organization on whose behalf the professional solicitor is acting must certify that the information filed under subsections (e) and (f) is true and complete to the best of its knowledge.

(h) At the beginning of each solicitation call, a professional fundraiser consultant and a professional solicitor must state all of the following:

(1) The name of the company for whom the professional fundraiser consultant or professional solicitor is calling.

(2) The name of the professional fundraiser consultant or professional solicitor.

(3) The phone number and address of the location from which the professional fundraiser consultant or professional solicitor is making the telephone call.

(4) The percentage of the charitable contribution that will be expended for charitable purposes after administrative costs and the costs of making the solicitation have been satisfied.

**(i) At least every ninety (90) days, a professional solicitor shall provide each charitable organization on whose behalf the professional solicitor is acting with access to and use of information concerning contributors, including the name, address, and telephone number of each contributor and the date and amount of each contribution. A professional solicitor may not restrict a charitable organization's use of information provided under this subsection.**

SECTION 3. IC 23-17-2-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 7. (a) "Corporation" means a public benefit, mutual benefit, or religious corporation incorporated under or subject to this article.

(b) The term does not include a foreign corporation.

**(c) For purposes of IC 23-17-24, the term does not include a**

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homeowners association (as defined in IC 34-6-2-58).

SECTION 4. IC 23-17-24-1.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 1.5. (a) This section applies to the following:**

(1) Notwithstanding IC 23-17-1-1, all corporations organized under Indiana law for a purpose for which a corporation may be organized under this article, regardless of the date of incorporation.

(2) A foreign corporation that desires to transact business in Indiana.

(b) In addition to a dissolution under section 1 of this chapter, the attorney general may petition a court to issue one (1) or more of the following remedies:

(1) Injunctive relief.

(2) Appointment of temporary or permanent receivers.

(3) Permanent removal of trustees, corporate officers, or directors who have breached the fiduciary duty.

(4) Appointment of permanent court approved replacement trustees, corporate officers or directors, and members.

(c) The attorney general may seek a remedy against any or all of the following:

(1) If the attorney general establishes a condition enumerated in section 1(a)(1) of this chapter, a corporation.

(2) For a violation of the officer's duties under IC 23-17-14-2, a corporate officer.

(3) For a violation of IC 23-17-13, a corporate director.

SECTION 5. IC 23-17-24-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 2. (a) Venue for a proceeding brought by the attorney general to dissolve against a corporation or its officers or directors lies in Marion County. Venue for a proceeding brought by any other party named under section 1 of this chapter lies in the county where:**

(1) a corporation's principal office is or was last located; or

(2) if the principal office is not located in Indiana, the corporation's registered office is or was last located.

(b) A director or a member does not have to be made a party to a proceeding to dissolve a corporation unless relief is sought against a director or a member individually.

(c) A court in a proceeding brought to dissolve a corporation may do the following:

(1) Issue injunctions.

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(2) Appoint a receiver or custodian pendente lite with all powers and duties the court directs.

(3) Take other action required to preserve the corporate assets wherever located.

(4) Carry on the activities of the corporation until a full hearing can be held.

(d) A person other than the attorney general who brings an involuntary dissolution proceeding for a public benefit or religious corporation shall give written notice without delay of the proceeding to the attorney general who may intervene.

SECTION 6. IC 23-17-24-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. (a) A court in a judicial proceeding brought **by the attorney general or by any other party named under section 1 of this chapter** to dissolve a public benefit or mutual benefit corporation may appoint at least one (1):

(1) receiver to wind up and liquidate; or

(2) custodian to manage;

the affairs of the corporation. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian has exclusive jurisdiction over the corporation and all of the corporation's property wherever located.

(b) The court may appoint an individual or a domestic or foreign business or nonprofit corporation authorized to transact business in Indiana as a receiver or custodian. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

(c) The court shall describe the powers and duties of the receiver or custodian in the appointing order, which may be amended from time to time, including the following:

(1) The receiver may do the following:

(A) Dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the court. However, the corporation is subject to a trust, an endowment, and other restrictions that would be applicable to the corporation.

(B) Sue and defend in the receiver's or custodian's name as receiver or custodian of the corporation in all Indiana courts.

(2) The custodian may exercise all of the powers of the corporation, through or in place of the corporation's board of directors or officers, to the extent necessary to manage the affairs of the corporation in the best interests of the corporation's

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members and creditors or to carry out the corporation's lawful purposes.

(d) The court during a receivership may redesignate the receiver a custodian, and during a custodianship may redesignate the custodian a receiver if doing so is in the best interests of the corporation and the corporation's members and creditors.

(e) The court may, during the receivership or custodianship, order compensation paid and expense disbursements or reimbursements made to the receiver or custodian and the receiver's or custodian's counsel from the assets of the corporation or proceeds from the sale of the assets.

SECTION 7. IC 30-4-5.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]:

**Chapter 5.5. Enforcement Powers of the Attorney General**

**Sec. 1. (a) This section applies if a trustee of a benevolent trust does any of the following:**

- (1) Commits a breach of trust.**
- (2) Violates the mandate of a charitable trust.**
- (3) Violates a duty listed in this article.**

**(b) The attorney general may petition a court to issue one (1) or more of the following remedies for an action enumerated in subsection (a):**

- (1) Injunctive relief.**
- (2) Appointment of temporary or permanent receivers.**
- (3) Permanent removal of trustees.**
- (4) Appointment of permanent replacement trustees subject to court approval.**

**A remedy under this subsection is in addition to any other remedy.**

**(c) The attorney general may seek a remedy listed in subsection (b) against a trustee or a trust.**

SECTION 8. IC 30-4-6-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 3. (a) Venue in a proceeding brought by the attorney general against a trustee or a trust lies in Marion County, unless a court determines that venue in Marion County would be a hardship for a trustee or a trust.**

**(~~a~~) (b) Unless the terms of the trust provide otherwise, venue in this state in a proceeding brought by a party other than the attorney general** for matters arising under this article shall be exclusively in the county in which the principal place of administration of the trust is located. The principal place of administration of a trust is that usual place at which the records pertaining to the trust are kept or, if there is

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no such place, the trustee's residence. If there are cotrustees, the principal place of administration is either that of the corporate trustee, if there is only one (1); that of the individual trustee who has custody of the records, if there is but one (1) such person and there is no corporate cotrustee; or, if neither of these alternatives apply, that of any of the cotrustees.

~~(b)~~ (c) If the principal place of administration is maintained in another state, venue in this state for any matters arising under this article shall be in the county stipulated in writing by the parties to the trust or, if there is no such stipulation, in the county where the trust property, or the evidence of the trust property, which is the subject of the action is either situated or generally located.

~~(c)~~ (d) Any party to an action or proceeding shall be entitled to a change of venue or change of judge as provided in the Indiana Rules of Procedure. A change of venue in any action shall not be construed to authorize a permanent change of venue for all matters arising under this article, and, upon conclusion of the action, venue shall return to the court where the action was initiated.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Employment and Labor, to which was referred House Bill 1453, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

TORR, Chair

Committee Vote: yeas 12, nays 0.

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## COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred House Bill No. 1453, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 6, delete lines 28 through 30.

Page 8, line 21, delete "or threatens to commit".

Page 8, delete lines 35 through 37.

Page 8, line 41, after "County" insert ", **unless a court determines that venue in Marion County would be a hardship for a trustee or a trust**".

and when so amended that said bill do pass.

(Reference is to HB 1453 as printed February 15, 2005.)

BRAY, Chairperson

Committee Vote: Yeas 9, Nays 1.

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